

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ROBERT BABUR BASAT, #472479,

Petitioner,

v.

CASE NO. 2:08-CV-13743
HONORABLE DENISE PAGE HOOD

THOMAS BELL,

Respondent.

_____ /

ORDER DENYING PETITIONER'S RULE 60(D) MOTION

Petitioner has filed a pro se motion pursuant to Federal Rules of Civil Procedure 60(d) challenging the Court's denial of his federal habeas petition in 2010. The United States Court of Appeals for the Sixth Circuit denied a certificate of appealability. *Basat v. Bell*, No. 11-1607 (6th Cir. 2011). The United States Supreme Court denied certiorari. *Basat v. Bell*, __U.S. __, 133 S. Ct. 169 (2012).

In his motion, Petitioner continues to contest the Court's decision and seeks relief under Federal Rule of Civil Procedure 60(d). That rule provides:

Other Powers to Grant Relief. This rule does not limit a court's power to:

(1) entertain an independent action to relieve a party from a judgment, order, or proceeding;

(2) grant relief under 28 U.S.C. § 1655 to a defendant who was not personally notified of the action; or

(3) set aside a judgment for fraud on the court.

Fed. R. Civ. P. 60(d). An independent action under Rule 60(d) is an equitable action, which has no time limitation. *Mitchell v. Rees*, 651 F.3d 593, 594–95 (6th Cir. 2011). Its elements are:

(1) a judgment which ought not, in equity and good conscience, to be enforced; (2) a good defense to the alleged cause of action on which the judgment is founded; (3) fraud, accident, or mistake which prevented the defendant in the judgment from obtaining the benefit of his defense; (4) the absence of fault or negligence on the part of the defendant; and (5) the absence of any adequate remedy at law.

Id. at 595 (citing *Barrett v. Secretary of Health & Human Svs.*, 840 F.2d 1259, 1263 (6th Cir. 1987)). An independent action under Rule 60(d) is available to prevent “a grave miscarriage of justice.” *Id.* (quoting *United States v. Beggerly*, 524 U.S. 38, 47 (1998), and citing cases). This is a “‘stringent’ and ‘demanding’ standard,” and, because Petitioner seeks relief from judgment in a habeas case, he must make a strong showing of actual innocence to establish that relief is required. *Id.* at 595–96 (citing *Calderon v. Thompson*, 523 U.S. 538, 557–58 (1998), and *Sawyer v. Whitley*, 505 U.S. 333, 339 (1992)).

Petitioner makes no such showing. Rather, he re-argues issues previously addressed by the Court and/or raises issues which could have been presented in his

initial habeas proceeding. Moreover, the Court independently reviewed the state court record and the state court rulings. There was no fraud upon the Court. Petitioner's allegations do not warrant the extraordinary remedy he seeks in this action. He fails to demonstrate that the Court erred in denying his habeas petition, that he is actually innocent, or that he is otherwise entitled to relief under Federal Rule of Civil Procedure 60(d). Accordingly, the Court **DENIES** his motion.

Before Petitioner may appeal this ruling, a certificate of appealability must issue. A certificate of appealability may issue only if he makes "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). When a court denies relief on the merits, the substantial showing threshold is met if the petitioner demonstrates that reasonable jurists would find the court's assessment of the claim debatable or wrong. *Slack v. McDaniel*, 529 U.S. 473, 484-85 (2000). When a court denies relief on procedural grounds, a certificate of appealability should issue if it is shown that jurists of reason would find it debatable whether the petitioner states a valid claim of the denial of a constitutional right, and that jurists of reason would find it debatable whether the court was correct in its procedural ruling. *Id.*

With *Slack v. McDaniel* in mind, judges within this district have adopted the following standard for determining whether a certificate of appealability should

issue in the context of the denial of a Rule 60(b) motion:

A COA should issue only if the petitioner shows that (1) jurists of reason would find it debatable whether the district court abused its discretion in denying the Rule 60(b) motion, and (2) jurists of reason would find it debatable whether the underlying habeas petition, in light of the grounds alleged to support the 60(b) motion, states a valid claim of the denial of a constitutional right.

Missouri v. Birkett, No. 2:08–CV–11660, 2012 WL 882727, *2-3 (E.D. Mich. March 15, 2012); *Carr v. Warren*, No. 05–CV–73763, 2010 WL 2868421, *2 (E.D. Mich. July 21, 2010) (both citing *Kellogg v. Strack*, 269 F.3d 100, 104 (2d Cir. 2001)). Having considered the matter, the Court concludes that Petitioner fails to establish that jurists of reason would find it debatable that the Court abused its discretion in denying his motion. Accordingly, the Court **DENIES** a certificate of appealability. This case remains closed.

IT IS ORDERED.

S/Denise Page Hood
Denise Page Hood
United States District Judge

Dated: October 7, 2015

I hereby certify that a copy of the foregoing document was served upon counsel of record on October 7, 2015, by electronic and/or ordinary mail.

S/LaShawn R. Saulsberry
Case Manager